



## **Government reforms undermine UN guiding principles on Business and Human Rights and encourage impunity for abuses**

Members of the Corporate Responsibility Coalition (CORE) are extremely concerned that, unless it is amended, the Legal Aid, Sentencing and Punishment of Offenders Bill (the Bill) will:

- **Act as a barrier to justice for victims of grave human rights abuses**

Accessing justice and holding perpetrators to account are fundamental elements of protecting human rights. Without justice there can be no accountability, and without accountability abuses will continue.

- **Shift liability for costs from multi-national companies (MNCs) (that have access to huge budgets and resources) to innocent victims from developing countries**

Under the proposed reforms, it is unlikely that victims such as the 69,000 people living in Bodo, Nigeria, would have been able to pursue a case against multi-national conglomerate Shell, who recently admitted full culpability for two massive oil spills in the region. The spills have caused livelihoods to be devastated; food and water sources to be contaminated; and widespread health problems. Before the case was legally pursued in the UK, Shell offered the Bodo community “£3,500 together with 50 bags of rice, 50 bags of beans and a few cartons of sugar, tomatoes and groundnut oil”, a pitiful remedy in light of the company’s profits of **£11.5 billion** in 2010.

- **Reduce vital compensation awarded to victims of abuses for damage to their health and/or livelihoods**

The government proposals state that both the success fee and the After the Event (ATE) insurance premium should be paid for out of the compensation awarded to victims. Taken together these costs are likely to wipe out potential damages awarded, and in many cases will make the claim financially unviable at the outset.

- **Provide NO saving to the public purse**

Human rights cases are not currently eligible for legal aid and therefore the reforms will provide no public fund savings. The only institutions that will save money due to these reforms are the MNCs accused of committing human rights abuses. MNCs that employ irresponsible business practices in order to increase profit will avoid being held to account and avoid having to pay compensation: the proposed reforms foster impunity and won’t save the British public a single penny.

### **Proposed reforms**

The government has proposed that ‘success fees’ should be recoverable from the claimant (victim) rather than the defendant, capping the amount at 25% of the victims’ damages. Additionally, After The Event insurance premiums under the reforms would become non-recoverable from the defendant and payable by the victim. This transferral will likely cause the claim to be financially unviable from the beginning, for both the victim and the law firm.

### **The government has not addressed the barriers to justice highlighted by CORE**

The Minister for Justice has stated that human rights cases are not sufficiently different to others to warrant an exception. However human rights cases are, by their nature, lengthy, complex and therefore expensive; while compensation is invariably low in comparison. An exception for clinical negligence cases has been allowed in the Bill in recognition of the complexity and costs involved in such cases. Human rights cases are comparable in complexity and cost. Moreover, in the cases of concern to CORE, human rights abuses have been committed by some of the world’s most profitable companies against some of the world’s poorest and most vulnerable individuals. To restrict access to justice in these cases serves not only to limit the victim’s right to

remedy, but gives the green light to MNCs with irresponsible business practices to continue acting with impunity.

The government claims that the reforms will rectify disproportionate costs to defendants and restore balance to the legal system. However there is no recognition from the MoJ that it is difficult and expensive to bring an international human rights claim against a multinational company. The government has not addressed the fundamental disparity of arms between the legal teams of multinational companies and the legal representatives retained by alleged victims. A recognised tactic in such cases is for the defendants' lawyers to create deliberate delays, through demands, procedural issues, and injunctions etc. to exhaust the claimants' means. Clearly this will drive up the legal costs on both sides and the existing disparity will be tipped even further in favour of the MNC.

The government has frequently stated that the reforms will deter avoidable claims; however they can provide no evidence of this being necessary. In response to a parliamentary question on unnecessary human rights claims, the Minister for Justice replied "The Government do not hold data on the number or detail of such claims, and whether they progress to court or settle" (12 January 2012). In fact, only 11 such cases have been brought in the past decade and in all of these cases the MNC has settled out of court or been found culpable.

The government has suggested that applying a 10% uplift to damages and qualified one-way cost shifting (QOWCS) will allow such claims to still proceed. However the 10% uplift won't apply to damages assessed according to foreign law (as is the procedure in these cases) and QOWCS will not prevent the need for ATE to be taken out as the claimant will still need to ensure they can cover their own costs should they lose.

The government says the introduction of Damage Based Agreements (DBAs) will mean such cases can still be brought but has not produced evidence to support this. In jurisdictions such as the US, where claimants receive much higher compensation, DBAs may be appropriate. However in the UK, compensation payable by defendants is relatively modest, so victims would be denied a proper remedy if the costs burden of litigation is shifted from defendants onto claimants. This would be an even greater problem for claimants from developing countries where damages are calculated at local rates, while the lawyers' fees reflect the UK's level of legal costs occurred (as per EC regulation Rome II).

The government has asked CORE to provide detailed information on legal costs in human rights cases. CORE has already submitted a legal opinion which shows how the reforms will eat into victims' damages in future cases, making such cases unviable to pursue. The onus must now be on the government to provide evidence to back up their assertion that their reforms will not restrict access to justice. The government has not - and we assume cannot - explain how such cases would proceed under the proposed reforms, leaving vulnerable victims without redress and MNCs beyond accountability.

For more detail on amendments to clauses 43 and 45 of the Bill, which would provide a human rights exception to civil litigation reform, see [list of amendments to be moved](#).

### **Members of the CORE Coalition are not alone in their criticism of the proposed reforms:**

Professor John Ruggie, the **architect of the UN guiding principles on Business and Human Rights** (which both the FCO and Prime Minister have publically committed to implementing) has expressed his concern to the government that their reforms would restrict access to justice in business related human rights abuse cases.

In their [twenty second report](#), the parliamentary **Human Rights Joint Committee** urged the government to introduce a suitable amendment to address the concern that reforms would restrict access to justice.

In their [submission to the UN Human Rights Council](#) for the UK's Universal Periodic Review, the **Law Society** stated that the reforms threaten to make human rights cases economically unviable.

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